

2009 DRAFTING REQUEST

Bill

Received: **12/11/2008**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Palchik**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Health - medical assistance**

Extra Copies: **TJD**

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

Pre Topic:

DOA:.....Palchik, BB0251 -

Topic:

Medical Assistance reimbursement for birth to 3

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			S&L
/1	rryan 01/06/2009	bkraft 01/06/2009	rschluet 01/06/2009	_____	sbasford 01/06/2009		S&L
/2	rryan 01/25/2009	kfollett 01/25/2009	mduchek 01/25/2009	_____	chanaman 01/25/2009		

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1215f
1/25

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/?	rryan	1 bjk 1/6		_____	_____		

FE Sent For:

<END>

2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Birth to 3 Program
- Tracking Code: *BB0251*
- SBO team: Health and Insurance
- SBO analyst: Laurie Palchik *LP*
 - Phone: 266-2214
 - Email: laurie.palchik@wisconsin.gov
- Agency acronym: DHS
- Agency number: 435
- Priority (Low, Medium, High): High

Intent:

- 1) Change current law to enable the department to claim federal matching funds for county expenditures for skilled therapy services in the Birth to 3 Program above the Medicaid reimbursement rate.
- 2) Change current law to allow special educators to bill for Medicaid services in the Birth to 3 Program.

See attached statutory language paper.

Birth to 3 Program

Decision Needed

What changes to current law are required to enable the Department to claim federal matching funds for county expenditures for skilled therapy services in the Birth to 3 program that are above the Medicaid reimbursement rate?

What changes to current law are required to allow special educators to bill for Medicaid services in the Birth to 3 program?

Background

1. Federal statutes permit states to claim federal Medicaid matching funds on expenditures for Medicaid-covered services provided to infants and toddlers under Individualized Family Service Plans (IFSP) developed pursuant to federal Birth to 3 laws.
2. Approximately 40% of children participating in the Birth to 3 Program have Wisconsin Medicaid as an insurance source. This percentage is anticipated to increase as enrollment in BadgerCare Plus increases.
3. There are two methods to change the current system to access additional federal dollars. First, the state could allow counties to certify amounts the county spends to cover the difference between actual costs of Birth to 3 occupational therapy (OT), physical therapy (PT), and speech and language therapy services and the amount reimbursed by Medicaid.
4. In order to claim federal Medicaid match for county expenditures covering the difference between actual therapy services costs and the amount reimbursed by Medicaid, Wisconsin Medicaid will need to develop an auditable cost reporting methodology for the counties, per federal requirements. In addition, a statutory change will be required in state appropriations statutes to allow federal funds received as a result of a county's cost reporting activities to be paid to the county.
5. A second method to claim additional federal funds is to allow special educators, under the direct supervision of a physician or practitioner in the healing arts, to bill Medicaid for their services as a HealthCheck – Other claim.
6. Currently, OT, PT, speech, and targeted case management are reimbursable Birth to 3 activities if performed by a licensed provider. The Department could allow reimbursement of OT, PT, and speech therapy services if performed by a therapist or by a special educator

under the direction of a therapist. Special educators could bill under a therapist using a T code, and be reimbursed through Medicaid for therapy services as well as developmental testing and assessment. Counties would continue to pay the cost of Medicaid-covered special educator services, but the Department would pass through to the county the federal match for these services based upon cost reports prepared by the county.

Current Language

49.45(52): This statute allows the Department to make Medical Assistance payment adjustments to county social services departments for specified medical assistance services, including therapy services .

(52) PAYMENT ADJUSTMENTS. Beginning on January 1, 2003, the department may, from the appropriation account under s. 20.435 (7) (b), make Medical Assistance payment adjustments to county departments under s. 46.215, 46.22, 46.23, or 51.42, or 51.437 or to local health departments, as defined in s. 250.01 (4), as appropriate, for covered services under s. 49.46 (2) (a) 2. and 4. d. and f. and (b) 6. b., c., f., fm., g., j., k., L., Lm., and m., 9., 12., 12m., 13., 15., and 16. Payment adjustments under this subsection shall include the state share of the payments. The total of any payment adjustments under this subsection and Medical Assistance payments made from appropriation accounts under s. 20.435 (4) (b), (gp), (o), and (w) may not exceed applicable limitations on payments under 42 USC 1396a (a) (30)(A).

49.46(2) 6. b. and c.: These statutes define medical assistance benefits for physical, occupational, and speech therapy services:

49.46 (2) BENEFITS

6. The following services if prescribed by a physician:

b. Physical and occupational therapy.

c. Speech, hearing and language disorder services.

49.45 (39): This statute establishes reimbursement methodology for Medicaid-coverable special education services received in a school setting

SCHOOL MEDICAL SERVICES

(b) School medical services. 1. 'Payment for school medical services.' If a school district or a cooperative educational service agency elects to provide school medical services and meets all requirements under par. (c), the department shall reimburse the school district or the cooperative educational service agency for 60% of the federal share of allowable charges for the school medical services that it provides and, as specified in subd. 2., for allowable administrative costs...The department shall promulgate rules establishing a methodology for making reimbursements under this paragraph. All other expenses for the school medical services provided by a school district or a cooperative educational service agency shall be paid for by the school district or the cooperative educational service agency with funds received from state or local taxes. The school district, the Wisconsin Center for the Blind and Visually Impaired, the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, or the cooperative educational service agency shall comply with all requirements of the federal department of health and human services for receiving federal financial participation.

2. 'Payment for school medical services administrative costs.' The department shall reimburse a school district or a cooperative educational service agency specified under

subd. 1. and shall reimburse the department of public instruction on behalf of the Wisconsin Center for the Blind and Visually Impaired or the Wisconsin Educational Services Program for the Deaf and Hard of Hearing for 90% of the federal share of allowable administrative costs, using time studies, beginning in fiscal year 1999–2000. A school district or a cooperative educational service agency may submit, and the department of health services shall allow, claims for administrative costs incurred during the period that is up to 24 months before the date of the claim, if allowable under federal law.

Proposed Change

1. Amend 49.45(52) to exclude therapy services (as defined in 49.46 (2)(b)6. b. and c.) provided by the Birth to 3 program from the Medicaid payment adjustment methodology under that section.

2. Insert a new provision, 49.45(54), that allows the Department to pass through to counties federal matching funds for certified public expenditures for Medicaid-covered services provided by the Birth to 3 program. Payments would include federal matching funds based on county expenditures certified by the county for Medicaid-covered speech, occupational, and physical therapy services (as defined in 49.46(2)(b)6. b. and c.) above the standard Medicaid reimbursement rate. Require county social service agencies to provide the nonfederal share of Medicaid expenditures above the Medicaid reimbursement rate in order to receive the federal matching funds.

3. Create a new Medicaid benefit of physical, occupational, or speech therapy services (as defined in 49.46(2) b and c) provided by special educators in the Birth to 3 program only under the direction of a licensed therapist. The new statute could be modeled after school-based services statutes found in 49.45 (39), and should include a definition of the Birth to 3 program, definition of Birth to 3 services eligible for reimbursement, and specify the benefit is limited to covered services provided by special educators who meet Medicaid provider certification criteria established by the Department, and who are working under the direction of a licensed therapist. The new statute should include certification and reporting requirements similar to those of school based services in 49.45 (39)(c).

4. Require that the county social service agency provide the nonfederal share of funds to cover the cost of these services.

5. Require counties to use the additional federal funds received in #1 or #3 for Birth to 3 or children's long-term support services.

Desired Effective Date: Upon passage of the bill
Agency: DHS
Agency Contact: Carrie Schneck, OPIB
Phone: 266-5362

Ryan, Robin

From: Schneck, Carrie E - DHS [Carrie.Schneck@dhs.wisconsin.gov]
Sent: Monday, December 15, 2008 11:04 AM
To: Ryan, Robin
Subject: RE: MA/ birth to 3

Hi Robin,

I sent your question to the division and will forward their response as soon as I receive it.

Carrie Schneck
608-266-5362

From: Ryan, Robin [mailto:Robin.Ryan@legis.wisconsin.gov]
Sent: Monday, December 15, 2008 10:58 AM
To: Schneck, Carrie E - DHS
Subject: MA/ birth to 3

Carrie,

This is the same question that I attempted to ask in my voice mail message to you.

Instead of creating a new MA benefit for physical, occupational, or speech therapy services provided by special educators, would it work if we provided that these special educators may be certified to provide physical, occupational, or speech therapy to birth to 3 enrollees if the special educators are working under the direction of a licensed therapist?

Thanks
Robin

Voice mail from Carrie 12/18/08:

No, want a new benefit
Want counties to spend and get match.
Don't want to have to reimburse as
GPR

01/05/2009



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1109??

RLR:.....

In 1/6/08

Ljk

DOA:.....Palchik - Medical Assistance reimbursement for birth to 3
FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

RMR

SA ✓
X-ref ✓

to not gen.

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

> Currently physical therapy, occupational therapy, and services for speech, hearing or language disorders (therapy services) are covered under MA if provided by a person who is certified by DHS to provide the service. DHS currently does not certify special educators to provide these therapy services. Also currently, DHS oversees the Birth to 3 Program, under which counties provide services to infants and toddlers with developmental delays.

This bill provides that if a county spends more to provide MA covered therapy services for children participating in the Birth to 3 Program than the county is reimbursed under standard MA reimbursement rates, and the federal government reimburses the state the federal share of MA for the county expenditures that are in excess of the standard MA reimbursement, DHS may disburse the federal share on the excess county expenditures to the county. The bill also provides that therapy services for children participating in the Birth to 3 Program that are provided by a special educator under the direction of a licensed therapist are covered under MA if the county pays the entire state share of MA for the services. The bill requires DHS to establish certification criteria for special educators. Finally, the bill requires that if the state disburses to a county the federal share of MA for therapy services for children participating in the Birth to 3 Program, the county must spend that money

to provide services under the Birth to 3 Program or under the Disabled Children's Long-Term Support Program.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 49.45 (52) of the statutes is amended to read:

49.45 (52) PAYMENT ADJUSTMENTS. Beginning on January 1, 2003, the department may, from the appropriation account under s. 20.435 (7) (b), make Medical Assistance payment adjustments to county departments under s. 46.215, 46.22, 46.23, or 51.42, or 51.437 or to local health departments, as defined in s. 250.01 (4), as appropriate, for covered services under s. 49.46 (2) (a) 2. and 4. d. and f. and (b) 6. b., c., f., fm., g., j., k., L., Lm., and m., 9., 12., 12m., 13., 15., and 16, except for services specified under s. 45.46 (2) (b) 6. b. and c. provided to children participating in the early intervention program under s. 51.44. Payment adjustments under this subsection shall include the state share of the payments. The total of any payment adjustments under this subsection and Medical Assistance payments made from appropriation accounts under s. 20.435 (4) (b), (gp), (o), and (w) may not exceed applicable limitations on payments under 42 USC 1396a (a) (30) (A).

History: 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340; 1987 a. 27 ss. 989r to 1000s, 2247, 3202 (24); 1987 a. 186, 307, 339, 399; 1987 a. 403 s. 256; 1987 a. 413; 1989 a. 6; 1989 a. 31 ss. 1402 to 1452g, 2909g, 2909i; 1989 a. 107, 173, 310, 336, 351, 359; 1991 a. 22, 39, 80, 250, 269, 315, 316; 1993 a. 16 ss. 1362g to 1403, 3883; 1993 a. 27, 107, 112, 183, 212, 246, 269, 335, 356, 437, 446, 469; 1995 a. 20; 1995 a. 27 ss. 2947 to 3002r, 7299, 9126 (19), 9130 (4), 9145 (1); 1995 a. 191, 216, 225, 289, 303, 398, 417, 457; 1997 a. 3, 13, 27, 114, 175, 191, 237, 252, 293; 1999 a. 9, 63, 103, 180, 185; 2001 a. 13, 16, 35, 38, 57, 67, 104, 109; 2003 a. 33, 318, 321; 2005 a. 22; 2005 a. 25 ss. 1120 to 1149f, 2503 to 2510; 2005 a. 107, 165, 253, 254, 264, 301, 340, 386, 441; 2007 a. 20 ss. 1513 to 1559h, 9121 (6) (a); 2007 a. 90, 97, 104, 141, 153.

SECTION 2. 49.45 (54) of the statutes is created to read:

49.45 (54) THERAPY FOR CHILDREN PARTICIPATING IN THE BIRTH TO 3 PROGRAM. (a) *Federal share for county expenditures.* If a county certifies to the department that the amount the county expended to provide services specified under s. 45.46 (2) (b) 6. b. and c. to children participating in the early intervention program under s. 51.44

1 exceeds the amount the county received as reimbursement under this section, based
2 on reimbursement rates established by the department for those services, and the
3 federal government pays the state the federal share of medical assistance for the
4 amount by which the county expenditures exceed the reimbursement, the
5 department may disburse the federal share to the county. A county that receives
6 moneys under this paragraph shall expend the moneys for early intervention
7 services under s. 51.44 or for services under the disabled children's long-term
8 support program, as defined in s. 46.011 (1g).

9 (b) *Therapy provided by special educators.* If a county provides children who
10 are participating in the early intervention program under s. 51.44 physical therapy,
11 occupational therapy, or speech, hearing, or language disorder services that are
12 provided by a special educator who is a certified provider of medical assistance and
13 provides the services under the direction of a licensed therapist, the department
14 shall reimburse the county the federal share of medical assistance for the county's
15 allowable charges for providing the services. The county shall pay the the remaining
16 expenses for the services. The department shall promulgate rules establishing
17 certification requirements for special educators who provide service under this
18 paragraph, and requirements for county reporting of expenditures for services under
19 this paragraph. A county that receives moneys under this paragraph shall expend
20 the moneys for early intervention services under s. 51.44 or for services under the
21 disabled children's long-term support program, as defined in s. 46.011 (1g).

22 **SECTION 3.** 49.46 (2) (b) 17. of the statutes is created to read:

SECTION 3

1 **49.46 (2) (b) 17. Therapy services under s. 49.45 (54) (b) for children**
2 **participating in the early intervention program under s. 51.44, that are provided by**
3 **a special educator.**

4 (END)

Ryan, Robin

From: Palchik, Laurie A - DOA [laurie.palchik@wisconsin.gov]
Sent: Friday, January 23, 2009 8:19 AM
To: Ryan, Robin
Subject: FW: birth to 3 language

Hi Robin,

Below are some late comments and changes from DHS regarding LRB-1109/1 Medical Assistance reimbursement for Birth to 3. Thank you.

Laurie A. Palchik
Executive Policy and Budget Analyst
Division of Executive Budget and Finance Department of Administration
608-266-2214 (w); 608-267-0372 (f)

-----Original Message-----

From: Schneck, Carrie E - DHS
Sent: Thursday, January 22, 2009 4:15 PM
To: Willing, Krista - DOA
Cc: Palchik, Laurie A - DOA; Gauger, Michelle C - DOA
Subject: birth to 3 language

Hello,

Laurie sent me Birth to 3 language re: special educators a couple weeks ago; I apologize for the delay in getting back to you. Here are the suggestions we have:

The intent of the proposal is to do something similar to Iowa and reimburse for the services provided by a special educator.

http://www.dhs.state.ia.us/policyanalysis/PolicyManualPages/Manual_Documents/Provman/inftodd.pdf

The way the draft proposal is written, it could be argued that the reimbursement of special educators for occupational therapy, physical therapy, or speech therapy services contradicts Regulations and Licensing's rules; Wis Admin OT1, PT1, and HAS 6. And I do not think the proposal would have support from the Wisconsin Therapy Associations. I do have wording change suggestions.

Page 1, Line 4. Strike "these therapy" so the line reads "...certify special educators to provide services."

Page 1, Line 11. Strike "therapy" and add "medically necessary." The line reads, "...the excess county expenditures to the county. The bill also provides that medically necessary..."

Page 1, Line 14 Strike "under the direction of a licensed therapist" The line reads, "...special educator are covered under MA if..."

Page 2 No Changes

Page 3 Line 7 Strike "Therapy" and replace with "Services"

Page 3 Lines 8 and 9 strike "physical therapy, occupational therapy, or speech, hearing, or language disorder services"

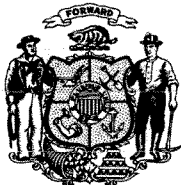
Page 3, lines 10 and 11. Strike "and provides the services under the direction of licensed therapist."

Page 3 lines 7 through 12 now read "(b) Services provided by special educators. If a county provides children who are participating in the early intervention program under s. 51.44 services to assess and promote the child's acquisition of skills provided by a

"special educator who is a certified provider of medical assistance, the department shall reimburse the county....."

Please let me know if you have any questions or need anything further from me.

Carrie Schneck
Budget and Policy Analyst
Office of Policy Initiatives and Budget
1 W Wilson Street, Room 618
PO Box 7850
Madison, WI 53707-7850
608-266-5362
carrie.schneck@dhs.wisconsin.gov



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1109/1

RLR:bjk:rs

In 1/25/09

DOA:.....Palchik - Medical Assistance reimbursement for birth to 3

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

Don't Gen

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to assess and promote
skill acquisition
that are
provided
by special
educators
to

or services provided
by special educators

under MA

to provide services under the Birth to 3 Program or under the Disabled Children's Long-Term Support Program.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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4 Medical Assistance payment adjustments to county departments under s. 46.215,
5 46.22, 46.23, or 51.42, or 51.437 or to local health departments, as defined in s. 250.01
6 (4), as appropriate, for covered services under s. 49.46 (2) (a) 2. and 4. d. and f. and
7 (b) 6. b., c., f., fm., g., j., k., L., Lm., and m., 9., 12., 12m., 13., 15., and 16, except for
8 services specified under s. 45.49 (2) (b) 6. b. and c. provided to children participating
9 in the early intervention program under s. 51.44. Payment adjustments under this
10 subsection shall include the state share of the payments. The total of any payment
11 adjustments under this subsection and Medical Assistance payments made from
12 appropriation accounts under s. 20.435 (4) (b), (gp), (o), and (w) may not exceed
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16 *Federal share for county expenditures.* If a county certifies to the department that
17 the amount the county expended to provide services specified under s. 45.49 (2) (b)
18 6. b. and c. to children participating in the early intervention program under s. 51.44
19 exceeds the amount the county received as reimbursement under this section, based
20 on reimbursement rates established by the department for those services, and the

1 federal government pays the state the federal share of Medical Assistance for the
2 amount by which the county expenditures exceed the reimbursement, the
3 department may disburse the federal share to the county. A county that receives
4 moneys under this paragraph shall expend the moneys for early intervention
5 services under s. 51.44 or for services under the disabled children's long-term
6 support program, as defined in s. 46.011 (1g). *I feel*

7 (b) *Services* Therapy provided by special educators. If a county provides children who
8 are participating in the early intervention program under s. 51.44 physical therapy,
9 occupational therapy, or speech, hearing, or language disorder services that are
10 provided by a special educator who is a certified provider of medical assistance and
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14 expenses for the services. The department shall promulgate rules establishing
15 certification requirements for special educators who provide service under this
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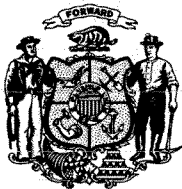
20 **SECTION 3.** 49.46 (2) (b) 17. of the statutes is created to read:

21 49.46 (2) (b) 17. Therapy services under s. 49.45 (54) (b) for children
22 participating in the early intervention program under s. 51.44, that are provided by
23 a special educator.

24 (END)

and the services are

Services to assess and provide skill acquisition to



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1109/2
RLR:bjk&kjf:md

DOA:.....Palchik, BB0251 - Medical Assistance reimbursement for birth to
3

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

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HEALTH AND HUMAN SERVICES

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disburses to a county the federal share of MA for therapy services, or services provided by special educators, for children participating in the Birth to 3 Program, the county must spend that money to provide services under the Birth to 3 Program or under the Disabled Children's Long-Term Support Program.

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4 Medical Assistance payment adjustments to county departments under s. 46.215,
5 46.22, 46.23, or 51.42, or 51.437 or to local health departments, as defined in s. 250.01
6 (4), as appropriate, for covered services under s. 49.46 (2) (a) 2. and 4. d. and f. and
7 (b) 6. b., c., f., fm., g., j., k., L., Lm., and m., 9., 12., 12m., 13., 15., and 16, except for
8 services specified under s. 45.49 (2) (b) 6. b. and c. provided to children participating
9 in the early intervention program under s. 51.44. Payment adjustments under this
10 subsection shall include the state share of the payments. The total of any payment
11 adjustments under this subsection and Medical Assistance payments made from
12 appropriation accounts under s. 20.435 (4) (b), (gp), (o), and (w) may not exceed
13 applicable limitations on payments under 42 USC 1396a (a) (30) (A).

14 **SECTION 2.** 49.45 (54) of the statutes is created to read:

15 49.45 (54) THERAPY FOR CHILDREN PARTICIPATING IN THE BIRTH TO 3 PROGRAM. (a)
16 *Federal share for county expenditures.* If a county certifies to the department that
17 the amount the county expended to provide services specified under s. 45.49 (2) (b)
18 6. b. and c. to children participating in the early intervention program under s. 51.44
19 exceeds the amount the county received as reimbursement under this section, based

1 on reimbursement rates established by the department for those services, and the
2 federal government pays the state the federal share of Medical Assistance for the
3 amount by which the county expenditures exceed the reimbursement, the
4 department may disburse the federal share to the county. A county that receives
5 moneys under this paragraph shall expend the moneys for early intervention
6 services under s. 51.44 or for services under the disabled children's long-term
7 support program, as defined in s. 46.011 (1g).

8 (b) *Services provided by special educators.* If a county provides services to
9 assess and promote skill acquisition to children who are participating in the early
10 intervention program under s. 51.44 and the services are provided by a special
11 educator who is a certified provider of medical assistance, the department shall
12 reimburse the county the federal share of medical assistance for the county's
13 allowable charges for providing the services. The county shall pay the the remaining
14 expenses for the services. The department shall promulgate rules establishing
15 certification requirements for special educators who provide service under this
16 paragraph, and requirements for county reporting of expenditures for services under
17 this paragraph. A county that receives moneys under this paragraph shall expend
18 the moneys for early intervention services under s. 51.44 or for services under the
19 disabled children's long-term support program, as defined in s. 46.011 (1g).

20 **SECTION 3.** 49.46 (2) (b) 17. of the statutes is created to read:

21 49.46 (2) (b) 17. Services under s. 49.45 (54) (b) for children participating in the
22 early intervention program under s. 51.44, that are provided by a special educator.

23 (END)